

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4574 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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JAYSHREEBEN D MASRUWALA

Versus

A M C

Appearance:

MR MB GANDHI for Petitioners

MR GN DESAI for Respondent No. 1

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 06/08/96

ORAL JUDGEMENT

1. The say of the petitioner No.1 in this Special Civil Application under Article 226 of the Constitution of India that she was allotted and given the possession of office No.109 admeasuring 300 sq.fts. area situated in Shefali Center, Paldi, Char Rasta, T.P.Scheme No.3, final plot No.840. It is also stated that the Banakhat with respect to the said property for M/s Sejal Construction, the builder of the Shefali Center has taken place on 11.12.1982. The petitioner had paid the full price of the said office No.109 and to that effect, a writing was also executed in favour of the petitioner. The petitioner No.2 is said to be the Karta of Anil and Mehta family Trust. In the Shefali Center, the petitioner No.2 was allotted 2800 sq.ft. of land which include the basement, lower ground floor, upper ground floor and mazzan which is situated on the right side while entering into the premises and the property facing western direction. It is stated that the possession of the said property was given to the petitioner No.2 in the year 1982. He has spent huge amount in development of the shop. the petitioner has also paid about Rs 11

lakhs to M/s Sejal Construction i.e. Builder of the Shefali Center.

2. The further say of the petitioner is that the respondents have demolished the structure. It is submitted that, before the demolition, no notice was given as required by section 260 of the B.P.M.C. Act.

3. Mr B.K.Patel, Town Development Officer, Municipal Corporation, Ahmedabad, has filed an affidavit and stated that the original owner of the land Niranjan Dholakia and others have submitted plans to the Corporation on 22.10.1981. As per the approval, the original owner was permitted a built up area of 530.18 sq.mtrs. with provision to be made for parking in the cellar and in the consolidated open plot of land. It appears that said Shri Dholakia sold this land to Sejal Vikas Mandal. It was found that the construction of the site was carried and continued contrarary to development plan and as such, the proceedings were taken under the provisions of section 267 of the B.P.M.C. Act. A prosecution was also filed against Shri Satish B. Shah, power of attorney holder of Sejal Vikas Mandal, the learned Magistrate by an order dated June 23, 1984 imposed a penalty on the said power of attorney Mr Satish Shah. In spite of this, the builder continued to raise the construction and therefore, the learned Magistrate again inflicted a penalty of Rs 1065/- on 31.1.85. A separate notice under section 260(1) of the Act were issued on 6.9.84 to Shri S.C.Shah, President and Shri D.S.Kusumgar, Secretary of Sejal Vikas Mandal on 6.9.1984. A reply was filed by the Mandal. Considering the reply, a direction was given to remove the offending structure as indicated in the notice Annexure "I". The notice was served on the Mandal on May 27, 1995. It is also stated that the total construction was carried out to 1.75 FSI as against the permissible limit of 1 FSI.

3. None appears for the petitioners. Considering the reply filed by the Corporation, to which no rejoinder has been filed, in my view, the petitioners have no case. the petitioners have concealed the material facts stated in the reply. If the petitioners have any grievance against the Mandal or any individual, they may avail remedy by way of filing the suit of damages against them.

4. In view of the aforesaid, there is no merits in this Special Civil Application and the same is rejected. Rule discharged.

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